

No. 95.

Queen's Bench,

APPEAL SIDE.

THE GRAND TRUNK RAILWAY COMPANY
OF CANADA,

APPELLANT;

and

ARTHUR C. WEBSTER,

RESPONDENT.

RESPONDENT'S CASE.

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1860.

No. 95.

Quern's Bench,

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PROVINCE OF CANADA,
LOWER CANADA TO WIT:
DISTRICT OF MONTREAL.

Court of Queen's Bench.

APPEAL SIDE.

No. 95.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

(Defendant in Court below.)

APPELLANT,

AND

ARTHUR C. WEBSTER,

(Plaintiff in Court below.)

RESPONDENT.

RESPONDENT'S CASE.

This is an Appeal from a judgment rendered by the Superior Court at Montreal, on the 31st day March 1860, in an action of damages instituted by the Respondent against the Appellant, condemning the latter to pay to the former the sum of £1382. 8. 9 cy., and interest thereon from the said 31st day of March 1860, and costs.

The action being a special one it is thought well to give the precise allegations of the declaration, which are as follows:—

“ That at all and every the times and periods hereinafter mentioned the said Defendant was a body Politic and Corporate, duly incorporated as such by virtue of Public Acts of this Province.

“ That on the first day of October 1853, the said Plaintiff was and for many months previously had been possessed of 268 shares of £25 Sterling each, in the capital stock of the said Company Defendant, as the owner and proprietor thereof.

“ That on the said first day of October 1853, the said Plaintiff being indebted to a certain copartnership firm then carrying on business in the said City of Montreal, under the name or style of Lemesurier, Routh & Co., in the sum of £1403 15s. 7d. Cy., for so much money loaned to him by the said firm, and having engaged to transfer to such firm 58 of the said 268 shares, as collateral security for the due payment of such indebtedness, and in order that the said firm might realize the amount so due to them by the Plaintiff out of the sale of the said 58 shares, he the said Plaintiff did, in due form of law, by an instrument in writing executed in duplicate on the said first day of October, 1853, transfer and sell to the said Lemesurier Routh & Co., the aforesaid 58 shares in the capital Stock of the said Company Defendant; the whole on the understanding, that the surplus of the proceeds of the sale by the said firm of the said 58 shares, after deduction of the Plaintiff's said debt should be paid by them to the said Plaintiff. That thereupon the said Lemesurier, Routh & Co., duly demanded of the said Company Defendant to transfer the said 58 shares of stock on the Books of the said Company Defendant, to them the said Lemesurier, Routh & Co., and then and there also presented to the said Company Defendant the said transfer, and offered to surrender the same, on the due execution of such transfer aforesaid on the Books of the said Company, but the said Company Defendant wholly neglected and refused to execute such transfer on the Books of the said Company; whereupon afterwards, to wit, on the 24th day of December, 1853, (the said firm having in the meantime made similar verbal applications, on several occasions, but without effect) through the ministry of J. J. Gibb and his colleague, Notaries Public, the said Lemesurier, Routh & Co., did formally reiterate their said demand to have the said 58 shares transferred as aforesaid on the Books of the said Company Defendant, and did also then and there re-exhibit and re-offer to surrender the said

transfer as aforesaid, but the said Company Defendant still persisted in refusing to transfer for the said 58 shares on the Books of the said Company, and thereupon the said firm duly protested against the said Company for all costs, losses, damages, injuries and hurts had, suffered and sustained or which might thereafter be had, suffered and sustained in consequence of the premises. As the whole will more fully appear by reference to an authentic copy of such Notarial demand and Protest herewith produced and filed, and to which the said Plaintiff particularly refers as forming part of these presents. That on the 25th day of November, 1853, the said Plaintiff being indebted to "The City and District Savings Bank of Montreal," in the sum of £4740 9s. 8d. Cy., for money by the said Bank loaned to him the said Plaintiff, and having engaged to transfer to the said Bank 210 of the said 268 shares, as collateral security for the due payment of such indebtedness, and in order that the said Bank might realize the amount so due to them by the said Plaintiff out of the sale of the said 210 shares, he the said Plaintiff did in due form of law, by an instrument in writing executed in duplicate on the said 25th day of November, 1853, transfer and sell to the said Bank, accepting thereof by and through and in the name of Alfred LaRoeque, the President of the said Bank, the aforesaid 210 shares in the Capital Stock of the said Company Defendant, the whole on the understanding that the surplus of the proceeds of the sale of the said 210 shares, after deduction of the Plaintiff's said debt, should be paid by them to the said Plaintiff. That thereupon the said Bank duly demanded of the said Company Defendant to transfer the said 210 shares of stock, on the Books of the said Company Defendant, to the said President of the said Bank, and then and there also presented to the said Company Defendant, the said transfer, and offered to surrender the same, on the due execution of such transfer aforesaid on the Books of the Company, but the said Company Defendant wholly neglected and refused to execute such transfer on the Books of the said Company. Whereupon afterwards, to wit, on the ninth day of December, 1853, (the said Bank having in the meantime made similar verbal applications, on several occasions, but without effect) through the ministry of J. J. Gibb and his colleague Notaries Public, the said Bank did formally reiterate their said demand to have the said 210 shares transferred, as aforesaid, on the Books of the said Company Defendant, and did also then and there re-exhibit and re-offer to surrender the said transfer as aforesaid, but the said Company Defendant still persisted in refusing to transfer the said 210 shares on the Books of the said Company, and thereupon the said Bank duly protested against the said Company for all costs, losses, damages, injuries and hurts, had, suffered, and sustained, or which might thereafter be had, suffered and sustained in consequence of the premises. As the whole will more fully appear, by reference to an authentic copy of such last mentioned Notarial demand and protest, herewith produced and filed, and to which the said Plaintiff particularly refers as forming part of these presents. That in so refusing to transfer the said several shares on the Books of the said Company as aforesaid, the said Company assigned no legal or sufficient ground for withholding such transfer and moreover had not any legal or sufficient ground or justification for so acting, but on the contrary were bound and liable forthwith on the demands so made as aforesaid to transfer the said several shares on the Books of the said Company, to the parties so demanding the same. That at the said several periods when the said demands were so made as aforesaid on the said Company Defendant, to transfer the said several shares of stock on the Books of the said Company, the said 268 shares were worth, in the Montreal Market, and were readily saleable therein at 18 per cent. discount, and that had the said Company Defendant transferred the said shares on the said Books of the said Company Defendant, as they were bound to have done, the said Lemesurier, Routh & Co., and the said Bank who held the same as aforesaid in the interest of the said Plaintiff could have and would have sold and disposed of the same for an amount not less than £5494 Sterling or £6684 7s. 4d. Currency. That notwithstanding all the foregoing premises the said Company Defendant still continued illegally to refuse to transfer on the Books of the said Company, the aforesaid 268 shares of the said Stock, or any part thereof, until the 4th April 1854, when the said Company transferred on their said Books the aforesaid 58 shares in favor of the said Lemesurier, Routh & Co., and until the 13th day of May 1854, when the said Company transferred the said 210 shares in favor of the said City and District Savings Bank of Montreal. That in the interim between the time when the said transfer on the Company's said Books was

so originally demanded as aforesaid and the respective dates last mentioned when the said transfer was so actually effected, the Capital Stock of the said Company Defendant became and was so greatly depreciated in value, that the only amount which the said Lemesurier, Routh & Co. and the said Bank were enabled to obtain and realise for the said 268 shares of Stock, which they caused to be sold with all reasonable and prudent despatch after the said transfers were so respectively made, on the Books of the said Company as aforesaid, was £4353 4s. 2d. Cy., instead of £6684 7s. 4d. Cy., which they could easily have obtained and realised therefor, had they been allowed to have their said transfers recorded on the Company's said Books at the period when the demands to that effect were first made as aforesaid; thereby causing a manifest loss to the said Plaintiff of at least £2331 3s. 2d. Cy., independently of loss of interest and costs of protest and other damages incidentally suffered by him, the said Plaintiff, by reason of the said illegal and unjustifiable acts of the said Company Defendant, which said loss of interest, cost of protest and other incidental damages aforesaid, the said Plaintiff estimates at £668 16s. 10d. Cy. That by reason of the said several premises and by law the said Plaintiff hath a right to recover from the said Company Defendant, the said two amounts last mentioned, which form united £3000 currency."

In order to test the principle of the Respondent's action the Appellant demurred to the said declaration, and by a judgment rendered in the Superior Court at Montreal, on the 28th day of June 1853, by the Honorable Mr. Justice DAY, the demurrer was maintained and the Respondent's action dismissed with costs. An Appeal however having been instituted from this judgment it was reversed by judgment of this Honorable Court rendered on the 6th day of March 1859. The following was the judgment so rendered by this Court:—"The Court . . . considering that the depreciation in the value of the Capital Stock of the Appellant, alleged in his declaration, is therein stated to have been occasioned by the unlawful refusal of the party Respondent to permit and allow the Appellant to dispose of and transfer the same. Considering that the Appellant has alleged injury sustained by himself by an act of the Respondent for which he has personally a right to demand damages from the party Respondent; considering that the Respondent should properly have availed himself of a defence to the merits and that the *défense au fonds en droit* by him pleaded is insufficient and unfounded in law, and that therefore in the judgment of the Court below by which the said *défense au fonds en droit* has been maintained and the Appellant's action has been dismissed there is error; it is considered and adjudged by the Court here, that the said judgment, that is to say, the judgment rendered by the Superior Court at Montreal, on the twenty eighth day of June last, be and the same is hereby reversed; and proceeding to render the judgment which the Court below ought to have rendered, it is further considered and adjudged, that the said *défense au fonds en droit* be and the same hereby is overruled, that the parties do proceed to the adduction of evidence upon the issue of fact between them and that the said Respondent do pay to the Appellant the costs by him incurred in this behalf as well in the Court below as in the Court here, and that the record be remitted, —the Hon. Mr. Justice C. Mondelet dissentiente."

In addition to the demurrer thus fyled to the whole action the Appellant fyled a demurrer to a portion of the Respondent's declaration, but, as the hearing on such demurrer was by consent of parties reserved until the final hearing on the merits, and as the points raised by such demurrer are also raised in the exception pleaded by the Appellant it is deemed unnecessary here to make further allusion to this special demurrer. The following is the exception pleaded by the Appellant:—"And for further plea to plaintiff's said action, defendants say, that all, each and every the allegations matters and things in Plaintiff's declaration set forth are untrue except in so far as the same may hereinafter be specially admitted to be true; that true it is that the Defendants are a body politic and corporate as alleged in the Plaintiff's declaration and the Plaintiff on the first day of October 1853, was a shareholder in the said company to the extent of 210 shares of said company's said share or stock; that as to the alleged debt of the said Plaintiff to the said Lemesurier, Routh and Co., and to the said City and District Savings Bank in said Plaintiff's declaration referred to, the said Defendants were and are wholly ignorant as well as in respect of the alleged transfers to the said firm, and to the said Bank, the said defendants further reserving all their rights from or by reason of the said alleged transfers not being produced and fyled in this cause and expressly plead-

ing under such reserve that previous to the month of July 1853 when the Atlantic & St. Lawrence Railroad Company, a body politic and corporate duly incorporated under the laws in force in this Province became and was merged in the Grand Trunk Railroad Company, the said Defendant had been and from the date of the formation and incorporation of the said St. Lawrence and Atlantic Railroad Company was and continued to be Secretary and Treasurer of said last named Company and kept their Books and received all their monies and funds and securities and was responsible to said Company by reason thereof and after the amalgamation of the said Companies and up to the month of September 1853, the said Plaintiff continued to be and was in the employ of the now Defendants as Treasurer and kept their books and received their cash and Securities and had not accounted therefor or for his said acts and gestion of the affairs of either of the said Companies, but the accounts of the said Plaintiff were and up to the 1st October 1853, and at the date of the alleged transfers continued to be wholly unsettled and the said defendant had in his said qualities made erroneous entries in the said Books and was liable for divers neglects and omissions and errors in said Books so kept and in cash and securities so received, which were in part on discovery thereof at various times afterwards settled to the extent of about £1400 currency.

That moreover by the law of the Province regulating the transfer of shares in the said Grand Trunk Railroad Company, a form was provided for the transfer of shares of their stock and it was also thereby provided that a duplicate of the transfer of stock should be delivered to the Directors of the said Company, nor were the Defendants bound to enter such transfer or transfers without the delivery of one part of the said duplicate, that the pretended transfers of said shares in Plaintiff's declaration mentioned were not made in the form regulated by the said law nor were the same in any legal form, although from the non-production of said transfers in this action the Defendants are unable to specify in detail the legal objections apparent in the alleged transfers, but the said pretended transfers were wholly insufficient, informal and of no effect. That moreover the said alleged transfer to the said City and District Savings Bank could not be recognized by the Defendants nor were they bound to register the same, inasmuch as the said Bank could not under and by virtue of the Statute under which it was formed, and, had existence as a corporate Bank, to wit, under an act of the Legislature of this Province passed in the Session thereof, in the fourth and fifth years of Her Majesty's Reign, intituled an act to encourage the establishment of and regulate Savings Banks in the Province become or be a shareholder in its own name in said Company and had not under the said act or under any law, or under any of its laws and regulations validly made the power or authority to become such shareholder. That by reason of the premises the said Defendants were and had good and sufficient reasons and were justified in declining at once to register said pretended transfers, and that by reason of litigation between the said parties in respect of the said gestion of the affairs of the said Companies, in respect of certain claims of the Plaintiff upon the said Defendants for salary in consequence of his dismissal from the Defendants service aforesaid which were pending in the Superior Court for Lower Canada, to wit at Montreal to wit an action against the now Plaintiff by the now Defendant in said Court under the No. 1537, praying for an account, and another action of the said now Plaintiff against the now Defendants for the cause aforesaid under the No. 2545 which were respectively decided upon and adjudged by final judgment rendered on the said cases respectively on the 28th day of March 1847, the said matters so in dispute were not until the rendering of the said judgment settled and ascertained, but the said Defendants did on or about the time and times in Plaintiff's declaration mentioned transfer the said shares on certain transfers which on Plaintiff's request they recognized and registered, the said Defendants are not liable towards the Plaintiff as in and by the said declaration he hath alleged. And the Defendants further aver, that no demand was made by the Plaintiff for registration of said transfers and the alleged demand of the said transferees, even if made, as alleged by Plaintiff, which Defendants deny were not the demands required to be made, nor were the transfers such as were necessary to be made nor can the said demand avail the Plaintiffs, nor the alleged contracts, understanding and agreements in his declaration set forth, inasmuch as the said Defendants never were party thereto or informed thereof but the same were made between the said Plaintiff and the said transferees on understandings & conditions which they did not know or sanction, that the said transfers, con-

tracts and understandings and the alleged relation of the Plaintiff as a debtor to the said transferees in the sums of money in his declaration mentioned and granting it to said transferees for the purpose of collateral security and the alleged protests and demands and offer to surrender the said transfers were and are in themselves and by reason of the premises wholly inoperative and of no effect as grounds of the present action in favour of Plaintiff and that in so far as respects the said Defendants, they confer no right on the Plaintiff what ever right the transferees may have had against him the said Plaintiff by reason thereof and whatever rights may at any time be urged against the Defendants by said transferees. That moreover the said alleged depreciation in the said shares was not occasioned by the said Defendants nor are the said Defendants liable therefor, or for the incidental losses or demand sought to be recovered, and the same were not caused by them the said Defendants, nor did the same flow directly and immediately from any refusal, neglect nor default of the Defendants, but from causes over which they had no control and in great part from the neglect of the said Plaintiff and the said transferees who did not sell the said shares within any reasonable time but on the Company delayed the said sale for many months until the shares had greatly depreciated and in fact sold the same in accordance with their own views and discretion the greater part whereof, to wit 210 shares thereof in May 1855, and that in fact the said Plaintiff suffered no damage whatever from the Defendants acts or which he can or ought to recover by reason of quality of stock-holder or in any other quality, nor did he pay, nor was he held responsible to said transferees as transferor or vendor of the said shares, of all which said several premises the said Plaintiff was at all and every the said periods well aware and hath admitted and acknowledged the allegations therein set forth to be true the whole as the Defendants are ready to verify when and as this Honorable Court may direct".

The Appellant also pleaded the general issue, and issue was joined generally. The following was the judgment rendered on the merits by the Court below:—"The Court . . . considering that the Defendant hath not sustained the special demurrer by the said Defendant filed in this cause to a part of the declaration and demands and that this special demurrer is unfounded in law doth dismiss the same; considering further that the Defendant hath not established in evidence the material allegations of the plea to the Plaintiff's action; considering that the Defendant was not justified in the refusal to register the transfers of the shares of stock, mentioned and set forth in the said declaration, when required to make such enregistration by the transferees; and considering that the Defendant, and seeing moreover that such refusal was contrary to law; and that it appears by the evidence produced by the said Plaintiff in this cause that the said refusal by and on the part of the said Defendant the Plaintiff hath suffered loss and damage on the said two hundred and sixty eight shares of stock to the amount of one thousand three hundred and eighty two pounds eight shillings and nine pence currency, by reason of the depreciation in the value of the same, to wit, on fifty eight shares transferred to Messrs. Lemesurier, Routh and Company between the twenty fourth day of December eighteen hundred and fifty three, date of the notarial demand made on Defendant to enregister the same, and the fourth day of April one thousand eight hundred and fifty four, date of registration, at and after the rate of fifteen pounds per centum, also depreciation on two hundred and ten shares transferred to the Montreal City and District Savings Bank between the ninth day of December eighteen hundred and fifty three and the thirteenth day of May, one thousand eight hundred and fifty four, at and after the rate of seventeen pounds and a half per centum, and for which loss and damage the Defendant is liable to the said Plaintiff, doth adjudge and condemn the said Company Defendant to pay and satisfy to the said Plaintiff the said sum of one thousand three hundred and eighty two pounds eight shillings and nine pence currency with interest thereon from this day until actual payment and costs as well upon the said special demurrer as upon the said action".

The issue between the parties having been reduced by the judgment of this Court to one purely of fact, it is unnecessary for the Respondent to say more, than that he clearly proved his damages to the full extent allowed by the judgment now appealed from, and that in consequence he confidently claims a confirmation of that judgment, at the hands of this Honorable Court.

MONTREAL 11th August, 1850.

Be Hume & Dunbar

Attorneys for Respondent.

Deposition of Witnesses examined by Respondent.

1.—ALFRED LAROCQUE:—I know the Plaintiff in this cause, and I know the Company Defendant. I was the President of the "City and District Savings Bank" of Montreal, on the twenty-fifth of November Eighteen hundred and fifty-three, and had been so for two or three years before, and continued to be for two or three years afterwards. On the day above mentioned the Plaintiff was indebted to the said Bank in the sum of Four thousand seven hundred and forty pounds nine shillings and eight pence currency, for money loaned to him by the Bank. As security for the payment of this debt, the Plaintiff transferred to the Bank on the said Twenty-fifth day of November Eighteen hundred and fifty-three, two hundred and ten shares of the Capital Stock of the Company Defendant. The understanding on which the Stock was held was, that if it was found necessary to sell the Stock, any surplus realised by the sale of the Stock over and above the amount of the Plaintiff's indebtedness, the Bank was to account to the Plaintiff for the same. After the execution of the Transfer, and before the making of the protest, copy of which is filed as Plaintiff's Exhibit Number Two, I called several times at the Office of The Company Defendant, in order to have the said Transfer registered on their Books. On each of these occasions, I carried the Transfer with me and presented it to the Vice-President, Benjamin Holmes, Esquire, requesting him to cause the same to be recorded on the Company's Books, and offering at the same time to surrender the Original Transfer. Mr. Holmes, as such Vice-President, distinctly refused to recognise the Transfer, and to record the same, giving as his reason that the Company had unsettled accounts with Mr. Webster, and that until these accounts were settled, the Company could not recognise the Transfer. The first time that the Bank had any intimation that the Transfer had been recorded by the Company must have been on the Nineteenth day of May Eighteen hundred and fifty-four, for I find that I made a minute of the fact, on that day. The Bank held these shares until the following year, and having never received any payment from the Plaintiff, with the Exception of the Dividends paid on the Stock and which were placed to his Credit on the Bank Books, and some minor payments to account, the Bank was under the necessity of selling the Stock, and accordingly sold One hundred and Eleven Shares, from the eighth to the fifteenth day of May Eighteen hundred and fifty-five which netted Seventeen hundred and forty-three pounds fourteen shillings and six pence; fifty Shares, on the Ninth of June Eighteen hundred and fifty-five which netted Seven hundred and ninety-nine pounds and four pence; and forty-nine Shares on the Eleventh day of June Eighteen hundred and fifty-five, which netted Seven hundred and Seventy-five pounds and four pence. The result is, that instead of the sale of the Stock realising a surplus, the Plaintiff is still largely indebted to the Bank on the original debt. The Balance against him on the Thirty-first day of December Eighteen hundred and fifty-eight, after deduction of the Dividends received on the Stock and the amount realised from the said sales, was Two thousand three hundred and sixty-eight dollars thirty-six cents which is still due with interest.

CROSS-EXAMINED.

Without waiver of Objections.

I do not think there was any arrangement in writing between the Bank and the Plaintiff. I suppose there was a special receipt given for the Shares, at least after the Shares were transferred on the Books of the Company.

The Plaintiff's transaction with us began by three loans represented by Notes as follows,

2nd April 1853	£1300.
13th " "	£2063 1 6.
7th May "	£750 0 0.

On looking at the Receipt Book of the Bank, I find the following entries therein:—"2nd April 1853, Receipt to A. C. Webster for seventy-two shares, St. Lawrence and Atlantic Railroad as coll. for loan of £1300" and a similar receipt of the "13th April 1853 for one hundred and eight shares for note of £2063 1 6." These are all the receipts I find in relation to said Stock, nor am I aware of any other written arrangement in relation to said shares between the Bank and the Plaintiff, except that before the sale, the Bank received a letter from Mr. Webster authorising the sale of the shares.—I do not recollect the dates of my calling upon the Company as mentioned in my examina-

tion in chief in relation to the registration of said shares. As far as I recollect I had conversation only with Mr. Holmes in regard to the registration of the said shares.—As far as I can remember Mr. Holmes said, the Company had accounts to settle with Mr. Webster, and could not accept a Transfer then.—This is the purport of what he said. The Stock I believe was sold through Mr. Crawford, Broker, and I believe a portion was purchased by Mr. Chapman on time.—At the time of these transactions, I was the President of the said Bank, and remained so until the month of July Eighteen hundred and fifty-five.—

Question.—Was any other arrangement made in reference to said Stock than what arose from the receipts given Mr. Webster as above mentioned?

Answer.—None that I am aware of, except the letter giving authority to sell, which is now in the hands of the President of the Bank.

I do not recollect whether the transfer was made in duplicate or not, but I am under the impression that it was. I do not recollect leaving a copy of the Transfer or duplicate at the Company's Office or delivering it to Mr. Holmes.

2.—HAYLAND LEMESURIER ROUTH.—I know the Plaintiff in this cause, and the Company Defendant.—I was one of the firm of Lemesurier Routh and Company, mentioned in the pleadings in this cause. On the first day of October Eighteen hundred and fifty-three the said Plaintiff was indebted to the said firm in an amount exceeding fourteen hundred pounds, and as collateral security for the payment thereof the Plaintiff transferred fifty-eight shares of the Capital Stock of the Company Defendant to the said firm. I now produce the duplicate original of the Transfer which was executed at the time. The signatures A. C. Webster & Lemesurier Routh & Co. subscribed to the said Transfer are respectively in the proper hand writing of the said Plaintiff and my self. The signatures J. Scott and A. Mackenzie, as witnesses, are respectively in the hand writing of John Scott and Alexander Mackenzie who were present and witnessed the execution of the transfer. The initials J. J. G. in the margin of the said Transfer are in the proper hand writing of Isaac Jones Gibb, Notary Public, and the signature of Will. Macbean is in the proper hand writing of William Macbean who was at the time he signed the said signature the Transfer Clerk of the Company Defendant. The understanding on which the said Stock was held by the firm was, that if it should be necessary to sell the Stock for the purpose of meeting the Plaintiff's indebtedness, any surplus realized beyond the debt was to be accounted for to the Plaintiff. Immediately after the execution of the transfer, I called at the office of the Company Defendant and presented the said Transfer and the Duplicate original executed at the same time, to William Macbean, the said Transfer Clerk, and requested him to register the same in the Books of the Company. This he declined doing, stating to the best of my recollection, that he had orders not to do so. I then saw the Vice-President of the Company Defendant, Mr. Benjamin Holmes, and repeated my request to him. Mr. Holmes distinctly refused to allow the Transfer to be registered, giving as his reason, to the best of my recollection, that Mr. Webster was indebted to the Company Defendant and until that debt was arranged for, the Company could not entertain the Transfer, or words to that effect. I called at the Company's Office afterwards, two or three times, and before I protested, repeating my request for registration of the Transfer. On each of these occasions I saw Mr. Holmes, the Vice-President, who still declined to permit the Transfer, for the same reasons already alleged. I remonstrated with Mr. Holmes, on these occasions, on the unfairness of refusing to register the Transfer, stating that I considered the Company was bound on presentation of the transfer and Certificates, which I also tendered, and are numbered in the margin of the Transfer, to register the transfer. I also cautioned Mr. Holmes on the damage that must accrue from the depreciation of the Stock in the Market, should the Company persist in the course it had adopted, informing him at the same time that I should protest against the Company which I accordingly did, on the Twenty-fourth day of December Eighteen hundred and fifty-three. The Transfer was afterwards Registered by the Company, namely, on the Fourth of April Eighteen hundred and fifty-four. As soon afterwards as it was practicable, I sold Thirty of the shares transferred with the consent of the Plaintiff, at the best price that could be obtained at that time, which was Thirty-seven and a half per cent discount. The sale took place on the Eighteenth day of May Eighteen hundred and fifty-four, and netted five hundred and sixty-eight pounds and eight pence, which

the firm received on the twenty-third day of May Eighteen hundred and fifty-four. The next sale that I was able to effect, was on the Thirtieth day of October Eighteen hundred and fifty-four, when I sold the remaining twenty-eight shares at forty-five per cent discount, which was the highest rate I could obtain at the time. The net proceeds of this sale were Four hundred and sixty-eight pounds, eight shillings, and four pence, which were received by the firm on the Thirteenth day of November Eighteen hundred and fifty-four. From the moment that the Transfer was effected, I had authority from the Plaintiff to sell the Stock, for whatever could be realized in the Market, in order that the two notes endorsed by the firm for his accommodation and on which he had received the money might be met at maturity, out of the proceeds of the sale of the Stock. In consequence of the non-registration of the transfer of the Stock, I was unable to retire these Notes out of the proceeds of the Stock, as was intended, and they were accordingly protested for non-payment. The first of these notes the said firm retired on the Thirtieth of December Eighteen hundred and fifty-three by a payment of Nine hundred pounds thirteen shillings, and the second note on the Twenty-eighth of January Eighteen hundred and fifty-four, by a payment of Five hundred and three pounds two shillings and seven pence. Instead of the said stock realizing a surplus over and above the Plaintiff's indebtedness to the firm, there was a balance against him of Three hundred and ninety-nine pounds eight shillings and ten pence, due as cash the Sixteenth day of January Eighteen hundred and fifty-five. In establishing this balance the Plaintiff was credited with Fifty-two pounds eighteen shillings and six pence of interest received from the Company on the said Stock on the twenty-fourth day of April Eighteen hundred and fifty-four.

CROSS-EXAMINED.

At the time the Stock was put into the hands of the firm, a receipt was given to the effect that the Stock was received as collateral security for the payment of the Notes, the Stock was returned to be returned to the Plaintiff, on payment, by him, of the Notes. This was about the twenty first day of September, Eighteen hundred and fifty three, as appears by the receipt given for said Stock, copy whereof is herewith produced. There was no other arrangement as to the Stock except the receipt, but subsequently, we obtained the Transfer referred to, in my examination in chief. I did not leave any duplicate in the office of the Company Defendant until the fourth day of April, Eighteen hundred and fifty four. I think I explained the nature of the transaction, to the best of my recollection to Mr. Holmes. The sale of the Stock was made by Mr. Crawford, a Broker of this City.

RE-EXAMINED.

I presume that the reason why I did not deposit the said Transfer until the fourth day of April, Eighteen hundred and fifty four was, that the Company would not accept it before.

3.—EDMUND J. BARBEAU:—I know the Plaintiff and the Company Defendant. I am now and since the first day of July, Eighteen hundred and fifty five, have been the Actuary of "The City and District Savings Bank of Montreal." The Transfer of two hundred and ten shares of the Stock of the Company Defendant by the Plaintiff to Alfred LaRocque, Esquire, President of the said Bank, and now produced by me I found among the records of the said Bank. I am well acquainted with the handwriting of the Plaintiff and of the said Alfred LaRocque and know that the signature A. C. Webster subscribed to the said Transfer is of the Plaintiff's proper handwriting, and that the signature, A. LaRocque, President, also thereby subscribed, is of the said Alfred LaRocque. The letter dated Montreal, 1st. December, 1853, also produced by me, I found among the Records of the said Bank. The whole of that letter, including the signature thereto subscribed, is of the proper handwriting of the said Plaintiff. The letters also produced by me dated respectively Montreal 21st. January, 1854, and Montreal, 23rd January, 1854, I likewise found among the Records of the said Bank. I am familiar with the signature John M. Grant who was the Assistant Secretary of the Company Defendant at dates of those letters and I believe the signature John M. Grant subscribed to each of those letters to be of his proper handwriting. I have no personal knowledge whatever respecting the transactions involved in the said Transfer and letters.

The Defendant declined to Cross-Examine.

4.—JOHN CRAWFORD:—I am now and during the past four years and upwards have been a Broker in this City. Being asked what was the Market value of the Defen-

dant's Stock, in the Montreal Market, between the ninth of December, Eighteen hundred and fifty three and the thirteenth of May of the year Eighteen hundred and fifty four, I answer, that during that period I, as such broker, made the following sales of Defendant's Stock, and that the prices obtained by me were at the time the best prices I could obtain therefor, namely: On the twenty fifth of January, Eighteen hundred and fifty four, Sixty shares at twenty three per cent discount, on the twenty eighth of the said month of January, Seventy four shares at twenty three per cent discount. On the twentieth of said month of January forty shares at twenty three per cent discount, on the first of February of the said year Sixty shares at twenty three per cent discount, on the ninth day of said month of February five shares at twenty three per cent discount, on the twentieth of March of the said year, twenty one shares at twenty seven per cent discount, on the twenty sixth of the said month of March nine shares at twenty seven per cent discount, on the third of May of the said year ten shares at thirty five per cent discount on the tenth of said month of May four shares at thirty seven and a-half per cent discount, and on the twelfth of said month of May three shares at thirty five per cent discount.—The next sale I made in May Eighteen hundred and fifty three, was thirty shares at thirty seven and a-half per cent discount. These were all the sales effected by me during the said period enquired of:—

Cross Examined without waiver of objection.

All these transactions went through my books and were made the subject of Contract Notes; my knowledge of the Market Value of the shares is derived from these transactions above alluded to simply:—

5.—DONALD LORN MACDOUGALL:—I am now and during the last fifteen years and upwards, have been a Broker in this City. Being asked what was the market value of the Defendant's stock in the Montreal Market, between the ninth of December eighteen hundred and fifty three, and the thirteenth of May of the year eighteen hundred and fifty four, I answer, that during that period I as such Broker had only seven transactions in connection with the Defendant's Stock. These transactions took place at the following dates, and realized the following prices, which were the best that could be obtained at the time for the Stock, viz., one transaction on the twenty first of December eighteen hundred and fifty three, when the Stock was sold at twenty per cent discount: on the sixth of January two transactions at twenty two and a half per cent discount; and on the fourteenth of January at twenty three and a half per cent discount. The only transactions I had in the month of May eighteen hundred and fifty three, were three on the eighteenth of that month: one of which was made at thirty six per cent discount, and the other two, at thirty seven and a half per cent discount:—

Cross-Examined.

The total number of shares referred to in all the above transactions was seventy eight. These were entered in my contract book.

Re-Examined.

The number of Shares involved in the transaction of the twenty first December 1853, was five: That on the first of the two which were had on the sixth of January 1854, fifteen, and that on the second of that date five. The number involved in the transaction of the fourteenth of January 1854, was thirteen. And the number involved in the three transactions in May, was twenty on the first, ten on the second, and ten on the third.

6.—AUGUSTUS N. HEWARD.—I was a broker in this City in the years eighteen hundred and fifty three and fifty four. Being asked what was the Market value of the Defendant's Stock, in the Montreal Market, between the month of December, Eighteen hundred and fifty three, and the nineteenth of May of the year eighteen hundred and fifty four, I answer, that the only transactions that I had as such Broker during that period, in connection with the Defendant's Stock, were the following, viz: On the fifteenth of December eighteen hundred and fifty three, I sold certain shares of the Company at 20 per cent discount: On the nineteenth of the same month, I bought certain shares of the Company at nineteen and a half per cent discount. On the third of January eighteen hundred and fifty four, I sold certain shares of the Company at twenty per cent discount; and on the same day bought certain other shares of the Company at twenty two and a half per cent discount: On the eleventh of the said month

of January I bought certain shares of the Company at twenty three per cent discount: and on the fourteenth of the same month certain other shares at twenty three and a half per cent discount, and lastly on the eighth of May, eighteen hundred and fifty four, I bought certain shares of the Company at thirty seven and a half per cent discount. All the above prices were the best that could be obtained at the time, in the Montreal Market.

The number of shares I so sold on the fifteenth day of December 1853, was eight, and the number I so bought on the nineteenth of the same month, was eight. The number I sold on the third of January eighteen hundred and fifty four was twenty, and the number I so bought on the same day was also twenty.

The number of shares so bought on the eleventh of the said month of January was twelve, and that on the fourteenth ten, and the number I so bought on the eighth of May 1854 was four.

Cross-Examined.

These transactions are all entered in our contract Book, I dont recollect on whose account these transactions were had.

